

House Bill 56 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49<sup>th</sup>, Geisinger of the 48<sup>th</sup>, Powell of the 171<sup>st</sup>, and Thompson of the 104<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to the joint county and municipal sales and use tax, so as to revise and change  
3 procedures and requirements regarding the renegotiation of distribution certificates; to  
4 change certain provisions regarding failure to file a new certificate; to change certain  
5 provisions regarding discontinuation of the tax; to provide an effective date; to repeal  
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the  
10 joint county and municipal sales and use tax, is amended by revising subsection (d) of Code  
11 Section 48-8-89, relating to the distribution of proceeds and the renegotiation of distribution  
12 certificates, as follows:

13 ~~“(d)(1) Except as otherwise provided in paragraph (7) of this subsection, a certificate~~  
14 ~~providing for the distribution of the proceeds of the tax authorized by this article shall~~  
15 ~~expire on December 31 of the second year following the year in which the decennial~~  
16 ~~census is conducted. No later than December 30 of the second year following the year in~~  
17 ~~which the census is conducted, a renegotiated certificate meeting the requirements for~~  
18 ~~certificates specified by subsection (b) of this Code section shall be filed with and~~  
19 ~~received by the commissioner. The General Assembly recognizes that the requirement~~  
20 ~~for government services is not always in direct correlation with population. Although a~~  
21 ~~renegotiated certificate is required within a time certain of the decennial census, this~~  
22 ~~requirement is not meant to convey an intent by the General Assembly that population~~  
23 ~~as a criterion should be more heavily weighted than other criteria. It is the express intent~~  
24 ~~of the General Assembly in requiring such renegotiation that eligible political~~  
25 ~~subdivisions shall analyze local service delivery responsibilities and the existing~~  
26 ~~allocation of proceeds made available to such governments under the provisions of this~~

27 article and make rational the allocation of such resources to meet such service delivery  
 28 responsibilities. Political subdivisions in their renegotiation of such distributions shall at  
 29 a minimum consider the criteria specified in subsection (b) of this Code section.

30 (2) The commissioner shall be notified in writing of the commencement of renegotiation  
 31 proceedings by the county governing authority ~~in~~ on behalf of all eligible political  
 32 subdivisions within the special district. The eligible political subdivisions shall  
 33 commence renegotiations at the call of the county governing authority ~~but no later than~~  
 34 before July 1 of the second year following the year in which the census is conducted. If  
 35 the county governing authority does not issue the call by that date, any eligible  
 36 municipality may issue the call and so notify the commissioner and all eligible political  
 37 subdivisions in the special district.

38 (3)(A) Following the commencement of ~~such~~ renegotiation, if the parties necessary to  
 39 an agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~  
 40 submit the dispute to nonbinding arbitration, mediation, or such other means of  
 41 resolving conflicts in a manner which, ~~in the judgment of the commissioner,~~ reflects a  
 42 good faith effort to resolve the dispute. Any renegotiation agreement reached pursuant  
 43 to this paragraph shall be in accordance with the requirements specified in paragraph  
 44 (1) of this subsection. If the parties fail to reach an agreement within 60 days of  
 45 submitting the dispute to nonbinding arbitration, mediation, or such other means of  
 46 resolving conflicts, any party necessary to an agreement may file a petition in superior  
 47 court of the county seeking resolution of the items remaining in dispute. Such petition  
 48 shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not  
 49 a judge in the circuit in which the county is located. The judge selected may also be a  
 50 senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

51 (B) The county and qualified municipalities representing at least one-half of the  
 52 aggregate municipal population of all qualified municipalities located wholly or  
 53 partially within the special district shall separately submit to the judge and the other  
 54 parties a written best and final offer as to the distribution of the tax proceeds. There  
 55 shall be one such offer from the county and one from qualified municipalities  
 56 representing at least one-half of the aggregate municipal population of all qualified  
 57 municipalities located wholly or partially within the special district. The offer from the  
 58 county may be an offer representing the county and any municipalities that are not  
 59 represented in the offer from the qualified municipalities representing at least one-half  
 60 of the aggregate municipal population of all qualified municipalities located wholly or  
 61 partially within the special district.

62 (C) Any qualified municipality or municipalities located wholly or partially within the  
 63 special district who are not a party to an offer under subparagraph (B) of this paragraph

64 and representing at least one-half of the aggregate municipal population of all qualified  
 65 municipalities who are not a party to an offer under subparagraph (B) of this paragraph  
 66 shall be authorized to separately submit to the judge and the other parties a written best  
 67 and final offer as to the distribution of the tax proceeds. There shall be one such offer  
 68 from such qualified municipality or municipalities.

69 (D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into  
 70 account the allocation required for any absent municipalities in accordance with  
 71 subsection (b) of this Code section. The visiting or senior judge shall conduct such  
 72 hearings as the judge deems necessary and shall render a decision based on, but not  
 73 limited to, the criteria in subsection (b) of this Code section and in paragraph (1) of this  
 74 subsection. The judge's decision as to the allocation of the tax proceeds shall adopt the  
 75 best and final offer of one of the parties under subparagraphs (B) and (C) of this  
 76 paragraph but shall also include findings of fact. The judge shall enter a final order  
 77 containing a new distribution certificate and transmit a copy of it to the commissioner.  
 78 Appeal shall be by application and the decision of the judge shall be disturbed only for  
 79 the judge's disregard of the law, for partiality of the judge, or for corruption, fraud, or  
 80 misconduct by the judge or a party.

81 (4) If the renegotiated certificate provided for in paragraph (1) of this subsection is not  
 82 received by the commissioner by the required date, ~~the authority to impose the tax~~  
 83 ~~authorized by Code Section 48-8-82 shall cease on December 31 of the second year~~  
 84 ~~following the year in which the decennial census is conducted and the tax shall not be~~  
 85 ~~levied in the special district after such date unless the reimposition of the tax is~~  
 86 ~~subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the~~  
 87 ~~tax is so terminated, the commissioner shall retain the proceeds of the tax which were to~~  
 88 ~~be distributed to the governing authorities of the county and qualified municipalities~~  
 89 ~~within the special district until the commissioner receives a certificate in behalf of each~~  
 90 ~~such governing authority specifying the percentage of the proceeds which each such~~  
 91 ~~governing authority shall receive. If no such certificate is received by the commissioner~~  
 92 ~~within 120 days of the date on which the authority to levy the tax was terminated, the~~  
 93 ~~proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the~~  
 94 ~~state's general fund~~ the commissioner shall continue to distribute the sales tax proceeds  
 95 according to the percentages specified in the existing certificate or in accordance with  
 96 subsection (f) of Code Section 48-8-89.1, as applicable, until a new certificate is properly  
 97 filed.

98 (5) If the commissioner receives ~~the~~ a renegotiated certificate by the required date, the  
 99 commissioner shall distribute the proceeds of the tax in accordance with the directions  
 100 of the renegotiated certificate commencing on January 1 of the year immediately

101 following the year in which such certificate was renegotiated or the first day of the  
 102 second calendar month following the month such certificate was renegotiated, whichever  
 103 is sooner.

104 (6) Costs of any conflict resolution under paragraph (3) of this subsection shall be borne  
 105 proportionately by the affected political subdivisions in accordance with the final  
 106 percentage distributions of the proceeds of the tax as reflected by the renegotiated  
 107 certificate or as otherwise ordered by the court.

108 ~~(7) All distribution certificates on file with the commissioner on July 1, 1994, which  
 109 were not renegotiated in accordance with the 1990 decennial census figures or  
 110 renegotiated on or after January 1, 1992, shall expire on December 31, 1995.  
 111 Renegotiations with respect to such certificates shall be commenced in accordance with  
 112 the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate  
 113 is not received by the commissioner by July 1, 1995, the authority to impose the tax  
 114 authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall  
 115 not be levied in the special district after that date unless reimposition of the tax is  
 116 subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall retain  
 117 and distribute the proceeds of such terminated tax in accordance with paragraph (4) of  
 118 this subsection.~~

119 ~~(8) No qualified municipality within the special district whose population is less than 5  
 120 percent of the population in the special district according to the United States decennial  
 121 census of 1990 shall receive a reduced percentage of distribution than presently being  
 122 received under the existing certificate prior to renegotiations required in paragraph (7) of  
 123 this subsection unless the new agreement is executed by the qualified municipality. This  
 124 paragraph shall apply only to the negotiations required by paragraph (7) of this subsection  
 125 and shall not apply to any subsequent renegotiations required by this subsection.~~

126 ~~(9)~~(7) Political subdivisions shall be authorized, at their option, to renegotiate  
 127 distribution certificates on a more frequent basis than is otherwise required under this  
 128 subsection.

129 (8) Notwithstanding any other provision of this article to the contrary, the imposition of  
 130 this tax shall not terminate based on a failure to file a new or renegotiated certificate.

131 ~~(10)~~(9) No provision of this subsection shall apply to any county which is authorized to  
 132 levy or which levies a local sales tax, local use tax, or local sales and use tax for  
 133 educational purposes pursuant to a local constitutional amendment or to any county  
 134 which is authorized to expend all or any portion of the proceeds of any sales tax, use tax,  
 135 or sales and use tax for educational purposes pursuant to a local constitutional  
 136 amendment."

137 **SECTION 2.**

138 Said article is further amended by revising subsection (d) of Code Section 48-8-89.1, relating  
 139 to lapsing of the tax due to failure to file a new certificate, as follows:

140 "~~(d) If a new certificate is not filed for any special district as required by this Code section,~~  
 141 ~~the authority to impose the tax authorized by Code Section 48-8-82 within that special~~  
 142 ~~district shall cease on the first day of January of the year following the year in which the~~  
 143 ~~required distribution certificate could last have been timely filed. In any special district in~~  
 144 ~~which the authority to impose the tax is terminated pursuant to this subsection, the tax may~~  
 145 ~~thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84~~  
 146 ~~through 48-8-86~~ Reserved."

147 **SECTION 3.**

148 Said article is further amended by revising Code Section 48-8-92, relating to the referendum  
 149 election on discontinuing imposition of the tax, as follows:

150 "48-8-92.

151 (a) Whenever the governing authority of any county ~~or~~ and the governing authorities of  
 152 at least one-half of qualified municipality municipalities located wholly or partially within  
 153 a special district in which the tax authorized by this article is being levied ~~wishes~~ wish to  
 154 submit to the electors of the special district the question of whether the tax authorized by  
 155 Code Section 48-8-82 shall be discontinued, ~~the~~ such governing ~~authority~~ authorities shall  
 156 notify the election superintendent of the county whose geographical boundary is  
 157 conterminous with that of the special district by forwarding to the superintendent a copy  
 158 of a joint resolution of the governing ~~authority~~ authorities calling for the referendum  
 159 election. Upon receipt of the resolution, it shall be the duty of the election superintendent  
 160 to issue the call for an election for the purpose of submitting the question of discontinuing  
 161 the levy of the tax to the voters of the special district for approval or rejection. The election  
 162 superintendent shall ~~set the date of the election for a day not less than 30 nor more than 45~~  
 163 ~~days after the date of the issuance of the call~~ issue the call and shall conduct the election  
 164 on a date and in the manner authorized under Code Section 21-2-540. The election  
 165 superintendent shall cause the date and purpose of the election to be published once a week  
 166 for two weeks immediately preceding the date of the election in the official organ of the  
 167 county. The ballot shall have written or printed thereon the following:

168 '( ) YES Shall the 1 percent retail sales and use tax being levied within the special  
 169 ( ) NO district within \_\_\_\_\_ County be terminated?'

170 (b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes,' and all  
 171 persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes  
 172 cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first

173 day of the second calendar quarter following the month in which the commissioner receives  
174 the certification of the result of the election; otherwise, the tax shall continue to be levied,  
175 and the question of the discontinuing of the tax may not again be submitted to the voters  
176 of the special district until after 24 months immediately following the month in which the  
177 election was held. It shall be the duty of the election superintendent to hold and conduct  
178 such elections under the same rules and regulations as govern special elections. It shall be  
179 ~~his~~ such superintendent's further duty to canvass the returns, declare and certify the result  
180 of the election, and certify the result to the Secretary of State and to the commissioner. The  
181 expense of the election shall be borne by the county whose geographical boundary is  
182 conterminous with that of the special district holding the election."

183 **SECTION 4.**

184 This Act shall become effective upon its approval by the Governor or upon its becoming law  
185 without such approval.

186 **SECTION 5.**

187 All laws and parts of laws in conflict with this Act are repealed.